Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-5381

MIKE GRANCICH, ARCHIE GALEA,
and FRANK MARTINEZ,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

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APPENDIX

APPENDIX "A"

PREFACE

Petitioners in Argument I, supra, set our comprehensively the law pertaining to judicial overreaching in the conduct of a criminal trial. Due to forced economy of space, time, and the difficulty inherent in presenting a coherent pattern, we have elected to chronologically capsulize the trial judge's misconduct in the course of this Appendix, rather than to elaborate the almost countless abuses via the scheme of accompanying a sentence or two of text with perhaps ten pages following of footnotes. In so doing, Petitioners conceive that this Court will have a better vantage point from which to evaluate the totality of the judicial misconduct so rife in the instant trial.

Prior to scrutinizing the transcript of trial, however, it is important to note that the 9th Circuit Court in United States v. Ryan (9th Cir. 1972) 455 F.2d 728, severely castigated the same trial judge, Manuel L. Real, for, in a milder form, perpetrating the same abuses engaged in in the present case and involving the same statutory scheme to some extent. Therefore, it seems to Petitioners that absolutely nothing that this Court has done suffices to convey to Judge Real the impartiality which he, as a trial judge, is duty bound to maintain whether subjectively he feels impartial or not.

In United States v. Ryan, supra, the prosecution

brought a charge for obstruction of justice, a violation of 18 U.S.C. 1503. The defendant, Ryan, was convicted and the court reversed. This Court excoriated the trial judge for allowing the lawsuit to be determined by such ticky-tack objections such as the cross-examination was beyond the scope of the direct examination, etc. The evidence also showed that Judge Real had, himself, been involved in a related case, even knowing the alias of one of the defendants. Judge Real further accused the defendant of feigning illness and exonerated his bail, remanding him to custody without cause. Moreover, the Judge suggested to defense counsel that the defendant was obstructing justice and stated, "Tell your clients I am sick and tired of fencing with them in terms of these changes". Additionally, he told one defense counsel, "Don't play games with me". Also, Judge Real acted on a motion prior to the hearing date although defense counsel formally stated at the time of the filing of said motion, "I am not arguing this motion to you at this time". The Court concluded that Judge Real, as the trial judge, "acted as accuser ..." [At Page 735, fn. 5].

Against the background of the Court's past efforts to deter Judge Real from committing egregious errors of the sort mentioned above, and the body of law constituting Argument I of this Appellate Brief, let us proceed to analyze the trial, and Judge Real's role in it and control of it.

During the testimony of the Government's initial witness,

Robert Fox, President of the Food Employer's Council, in the business of negotiating in behalf of Employers', the Court sustained an objection to Defense Counsel's question as to whether Fox represented Robert Ruchti I, in any labor transactions. Inasmuch as in fully one-half of the case it was the defense' contention that unpaid back wages were owed the Teamsters and Butcher's Unions by Robert Ruchti and his son, Robert Ruchti II, the failure to permit any probe into the relationships with Mr. Ruchti, Sr., seriously damaged the defense in that it was unable to adduce the facts necessary to explain the defendants subsequent conduct (R.T. 140). Again, during Mr. Fox's testimony, defense counsel sought to ascertain whether Fox, as the employers' representative over the years, knew of instances where packing houses would seek to use their own drivers to unload out-of-state meat and Local 626 of the Teamster's Union would prevent that conduct. The objection was summarily sustained on the grounds that the government did not understand it. Yet, later, the government was to base most of it's case on alleged attempts by Local 626 to prevent allowing packers to do their own unloading. (R.T. 144). At Page 145 of the Transcript, the Court on two occasions censured defense counsel for attempting to persuade the witness, Fox, to be responsive to counsel's question. On Page 146 of the transcript, the Court engaged in the following colloquy with one of defense counsel:

"The Court: Mr. Nizinski, let's get to something relevant to this case.

Mr. Nizinski: I feel it is all relevant.

The Court: No, it is not.

Mr. Nizinski: We are dealing here, your Honor, with ---

The Court: I understand, Mr. Nizinski, Get to a question that is relevant to the issues here. (Brief Pause.)"

On Page 147, Defense Counsel, in cross-examination, sought to request of Mr. Fox precisely what words he attributed to Mr. Grancich in asking Fox's companies to use Vernon Unloading service. An objection of asked and answered was summarily sustained by the Court despite the fact that the question was asked on cross-examination, was highly relevant, and counsel had not previously asked the question.

One page later, the Court cut-off defense counsel's questioning concerning collective bargaining between packers and the union by stating to the jury that the National Labor Relation's Board does not consider questions of negotiations between employers and employees, but deals only with unfair labor practices. The Court argued vigorously with defense counsel and stated that the NLRB had no jurisdiction to settle collective bargaining disputes whether there existed a contractual relation or not. When defense counsel attempted to explain the purpose for his questioning, the Court responded, "Let's not argue the Law. The jury has to be instructed on it, and I will do the instructing on the law." (R.T. 149). Tragically, when the Court understood the nature of the defense he reversed his position

180 degrees, and told the jury time and time again that the NLRB had finally settled all grievances between employers and employees involving contractual relations, and, therefore, as a matter of law the defendants, union members, could not picket or demonstrate for back wages. This schizophrenic attitude permeated the entire trial and left the defense in constant bewilderment as to what the judge would permit in evidence, in argument, and in his instructions to the jury. Twice more on Page 149, defense counsel, a labor law expert, sought to have Mr. Fox explain to the jury how many disputes between unions and employers go through arbitration obviously to emphasize that many do, that Ruchti violated the arbitrated settlement and that in many cases picketing is resorted to, which is permissible conduct. Two swift objections on the grounds of irrelevancy were sustained without reasons by the trial court. One page later, approximately the same event occurred. It is no overstatement to point out at this juncture that after only one prosecution witness had testified, all defense counsel were dismayed, demoralized, intimidated and were on the threshold of the realization that a Kangaroo Court was in progress. In fact, although each of the three defense counsel represented different defendants, and there was only a slight overlap in their questions, the Court took it upon himself to state, at the end of Mr. Fox's testimony: "Counsel, I would ask each of you to confine yourselves to questions on cross-

examination which are not covered by any other counsel because we do not want to try this case three times. Once is enough." (R.T. 151).

During the examination of Homer Baird Robinson, a partner in High Standard Meat Processing Company, the Court interceded after all counsel had concluded questioning the witness and asked two questions designed to elicit the responses that the Teamsters and Pronto Unloading Service may have intimidated Mr. Robinson into using Pronto Unloading Service to unload its trucks and that the Teamster's Union Local 626 had nothing in their contract requiring that a certain number of men be used to load or unload trucks and thus any complaint on the ground that more men should be used would be illicit. (R.T. 173). The Court continued this devious pursuit on Pages 175 and 176.

During the cross-examination of prosecution witness Joseph Goldstein, he claimed to have been asked by Defendant Galea, after a conversation with Defendants Galea and Grancich, for $1500, which he made available. In the end he claimed he payed Galea much less and that there was money left over. Goldstein was questioned several times concerning what happened to that money, since the defense was contending that no such money changed hands. The veracity of the witness, one of the two or three most crucial witnesses, was most certainly in issue. Nevertheless, all prosecution objections were sustained. (R.T. 233-34). In further cross-examination of Mr. Goldstein another crucial question was

asked by defense counsel, namely, whether he, as head of a large packing company in the Vernon area, had ever been approached to use Pronto Unloading Service in his operation. The Prosecution merely stated, "Objection", and the Court simply uttered, "The objection is sustained". Needless to say, the defense was simply attempting to counter the prosecution's thesis, that there was a systematic attempt by the owners of Vernon or Pronto Unloading and certain Teamster officials to concertedly compel the packers in the Vernon Area to use Pronto or Vernon Unloading Services. A "No" answer by Mr. Goldstein would have run counter to the government's case and substantially aided the defendants. The Court did not permit him to respond at all. (R.T. 236).

Indicative of the Court's attitude toward defense counsel, when counsel for the Union Members, noting it was 12:30, and wished to know when the court was going to break for the noon recess asked the Court what time it was thinking of recessing, he snapped, "Just keep your cross-examination up, Mr. McKissack." (R.T. 314). During a recess, and while Mr. Dougherty, a former partner of Pronto Unloading Service, who had been immunized in order to testify against the defendants was still scheduled for additional testimony, the defense requested that pursuant to a served subpoena duces tecum he bring to court certain income tax records and books covering the period of his association with Pronto Unloading to the present. The Court whimsically told Counsel

Nizinski that he was not entitled to see Dougherty's income tax papers to ascertain his earnings. (R.T. 342).(Nizinski's client, Donald Matthews, was later interrogated concerning his income tax records which the Government had procured.) Since Dougherty claimed that he was making a mint before being forced to join Pronto Unloading, and that his joining was coerced, it would have been of great value -- he being one of the chief witnesses for the Government, to learn whether his claims were true. The defense was informed that Mr. Dougherty's financial position seriously improved when he joined Pronto Unloading, but the Court's ruling made the contention impossible of substantiation. Similar attempts to challenge the credibility of Dougherty were rebuffed by the Court's sustaining objection after objection. (R.T. 349-352, 355-56, 357, 359).

A Mr. Lopez Palma, testified through an interpreter that he worked for Pronto Unloading a couple of times. Continuous attempts by the defense to show that he had been deported on several occasions, and thus had a reason to testify against the defendants were blocked by the Court's systematic sustaining of all objections. (R.T. 415). At one point, the Court remarked, "All right, Mr. Nizinski, let's get to it. It is not necessary. This man is not on trial." This type of comment was typical throughout the trial and clearly imparted to the jury that impeachment for bias or motives by prosecution witnesses to lie were not to be considered and the

Government's witnesses words were to be regarded as gospel.

The prosecution summoned Jesus Villamontes Vargas, who testified that he suffered an industrial accident while working for Pronto, namely, a pig fell on his stomach. He indicated that he was loaned some money but was unaware of any insurance program intended to cover him. Defense counsel objected to this attempt to sidetrack the jury, unduly prejudice it, and, of course, the whole inquiry assumed that Vargas was <u>eligible</u> for some type of coverage, which he wasn't. (R.T. 420-423). (Later, when Mr. Nizinski sought to bring into evidence Pronto's medical plan, the Court severely criticized him and refused him permission to enter into the subject.)

At this point in the case, a discussion ensued of events dealing with the extortion and illegal picketing charges under the Hobbs Act involving Ruchti and Ruchti Brothers. The Prosecution and the defense began to lay out their theories of the crux of that portion of the case. (R.T. 459-464). The colloquy continued from Page 492 through Page 512. Certain predispositions, and erroneous ones, were adopted by the trial judge during that lengthy exchange. When defense counsel explained that the defendants were picketing Ruchti's trucks in the good faith belief that they were entitled to do so to collect back wages and did so pursuant to legal advice by a Lawyer who practiced and practices Labor Law exclusively, and that evidence would be put on to that effect, the Court's

simplistic response was, "But that'ain't legal'" (R.T. 494). Another thesis the Court committed itself to was insulating Robert Ruchti II, from being questioned to show amongst other things that there was a prior wage claim, an arbitration that he reneged upon, that he had resumed some of the same operations against which Teamster members had outstanding wage claims, etc. The Court insisted that the defense must produce that evidence independent of Mr. Ruchti and that such questions constituted improper cross-examination. Furthermore, the court told defense counsel that the Ruchti matter was, "a very simple question. That happened on May 5th and April 28th and 29th. Not a year before. Not two years before." (R.T. 497) Of course the problem turned out to be not so simple as will be shown later, and the relevance of the prior relations with Ruchti was admissible in terms of the defendants state of mind,as well as their right to picket, and the question of whether there were successor corporations, etc. The Court both misconceived the issue and even prejudged the Labor Lawyer's advice when he stated, "he gave him bum advice, because that is not a successor corporation under the law." (R.T. 498).

On cross-examination of Robert Ruchti, II, it was pointed out that Ruchti had told the Grand Jury approximately two weeks after the picketing incident that the $30,000 requested was to go to the Union membership with a breakdown of $17,000 to the Teamster's Union and $14,000 to the Butcher's

Union -- or perhaps an even division. This was devastating impeachment in that it contradicted Ruchti's and the Government's whole theory of the case namely, that certain Union Business Agents, or maybe one or two, were going to divide up the loot between themselves. The Court severely criticized counsel for so impeaching Ruchti. (R.T. 729). When one of the defense counsel, Mr. Fishman, a Labor Lawyer, sought to show that there were vast wage claims against Ruchti, which were even litigated in the Courts, the Trial Court again sustained objections. (R.T. 731-735). Again the Court declined to allow Counsel to investigate Robert Ruchti, II's managerial responsibilities, the nature of his concern, his actual or ostensible relationship to the Union or it's membership. (R.T. 733,734). When Ruchti was questioned about his significant admission that earlier he imagined that the monies he was being asked to pay were to go to the Union rather than any business agents, the Court improperly quoted the evidence and condemned Defense Counsel for going into the subject. (R.T. 751-752). Further attempts to discredit Ruchti and demonstrate his bias only resulted in further Judicial rebuke. (R.T. 758,760). The Court even ruled inadmissible the fact that Ruchti drew a loaded gun and threatened Frank Martinez, one of the defendants, on the grounds that the Court wasn't trying any kind of assault case. The Court stated in the presence of the jury, "Stay with the lawsuit that we have here, not any other lawsuit." (R.T. 760). More harassment

continued--Pages 763, 764, and 766. Numerous attempts were made to show that the trucks which were picketed by the Teamsters and a member of the Butcher's Union bore the name and logo of Ruchti Bros., the company against which the Unions had their claim. Furthermore, Ruchti's trucks were registered to Ruchti Brothers with the same old address of Ruchti Bros., Ruchti's new outfit had the same address. Objections to eliciting all of this information were sustained (R.T. 776-77) More Court inflicted chastisement indicative of bias occurred at Pages 778, 779,and 780.

Other examples of improper sustaining of objections of highly relevant information pertaining to co-defendants appear at Pages 861, 868, 869, 870, 871, 915, 916 and 919). On Pages 947-9, when defense counsel was attempting to impeach an obviously irascible and hostile witness, Fred Blea, the Court summoned counsel to the bench and characterized his impeachment of this critical witness as totally immaterial. When co-counsel, Mr. Nizinski, made several relevant inquiries of Mr. Blea, the Governmental objections were sustained without even a ground being stated. (R.T. 956-957). Ultimately, at Page 958, the Court literally screamed, "Mr. Nizinski, Let's get to this lawsuit! You are in a different lawsuit'" Nizinski had been trying, over the combined efforts of the Court and Prosecutor, to demonstrate that Fred Blea was not driven out of business, as he claimed, but continued in business. More impediments were imposed on Pages 962, 963,

966 and 967. From Pages 967 to 970, defense counsel, in good faith, sought to impeach Mr. Blea for prior convictions for felonies based on information transmitted to him by the FBI Agents working the Case. At pages 971 and 972, the Court castigated defense counsel by announcing a new rule regarding felony impeachment applicable to his court alone and applying it retroactively (Pages 971-73). When counsel sought to explain his handicap, in that he had just been given the FBI make sheets, and,therefore, could not have obtained certified copies of out-of-state conviction, the Court's quip was, "That's too bad". (R.T. 972).

The most unbelievable event in the entire trial occurred on Friday, March 9th, 1973, at 9:30 A.M. Defense counsel had just concluded discussing the progress of the prosecution's case in the hallway, and it was indicated that they (the prosecution) had more witnesses to present. That was a few minutes before Court commenced. 9:30 arrived, the Government immediately stood up and rested. The very next sentence was uttered by the Court in the form of a statement, "Do you wish to make an opening statement, Mr. McKissack?" (R.T. 978). Thus, the Government had materially, the day before, and that morning, misled the defense into believing that they were going to proceed to put on more evidence. As explained by counsel, he requested of the prosecution the afternoon before, how many more witnesses would be called and how much longer the Government's case would take to present so that the

defense could prepare to proceed. The prosecutor, Mr. Carney, walked over to the Court Reporter, whispered in her ear, and avoided counsel's question. Needless to say, based upon the misrepresentations, the defense had not inconvenienced it's witnesses, because it had every reason to believe that the Government was going to proceed with its case. Furthermore, and quite revealing, the statement that the Government rested came as no surprise to Judge Real, who immediately requested of Counsel McKissack whether he wished to make an opening statement. In view of the fact that at the close of the prosecution's case the next logical judicial step would have been to undertake the hearing of motions under 18 USC Section 29A for judgment of acquittal, (In fact at the termination of the case, the Court exonerated two of Mr. McKissack's clients)* the Court's request was altogether bizarre. All of the circumstances concerning this strange series of events, and the defense's forthright statement that it was not prepared to proceed at that moment without a recess until the afternoon, are set forth in the transcript. (See pages 977-1034). Some of the matters included during that exchange included accusations by the Court that counsel at first had been permitted to ask questions which he had been denied permission to ask, then a decision by the Court without hearing any defense evidence that the NLRB ruling disposed of the defendant's wage claims, their right to protest their grievances, and seemingly, their criminal

* The 9th Circuit Court of Appeal exonerated two more.

responsibility for not having judged the case the way Judge Real had, rather than listen to their attorney, a Labor Law specialist, George Pappy, who later testified. At one point, concerning an NLRB judgment which defense counsel had never seen, the Court stated, "You know how to proceed in those matters, Mr. McKissack". Mr. McKissack responded, "I'm not sure that I do, your Honor." The Court responded with an impartial benevolence dedicated to the ascertainment of Justice, "You had better learn". (R.T. 991-992).

After the extended colloquy, the Court allowed a recess only until 11:15 A.M. at which time the defense was compelled to proceed. During the twenty-five minutes allotted the defense to prepare it's case, it discussed various alternatives. Feeling that our clients would be hurt because the jury would not understand if we simply rested without a defense, we elected to blindly proceed ahead. The fact that the defense had under subpoena several witnesses, some of them rather elusive - having been deported several times - and all the rest hostile, we did not treat the issuance of a subpoena and it's service as compelling us to call those people to consume time which the prosecution had previously told us they would be utilizing to present evidence. The prosecution's case had always been estimated by all parties to last a month or more. In fact, since we worked from early morning into the night their case took two and one-half days. Therefore, the quandary of the defense garnering all of it's witnesses,

some from as far away as the State of Washington, made it impossible to proceed in any organized fashion. On Page 1030 of the Transcript, the Court demonstrated his unbiased demeanor with the following expression:

> "THE COURT: Just a moment, gentlemen. Just a moment. Have you gentlemen ever heard of the telephone? Mr. Bell made a lot of money as a result of that invention. That gets people here in a hurry. That is what they advertise.
>
> MR. McKISSACK: We have been doing it since your Honor had a recess. We have been making calls. I want to put in the record we have been averaging about twenty hours a day working on this case from the time we are in this court and so forth. And to work twenty hours a day consistently I think is doing a pretty good job. So that is ---"
>
> THE COURT: Twenty hours a day, Mr. McKissack? Then you should be prepared to go ahead."
>
> MR. McKISSACK: Well, obviously we aren't."

Counsel gave their opening statements under extreme pressure and without preparation.

The defense testimony commenced. (R.T. 1081). The first defense witness was Donald Prayzich, who worked with Mr. Fox in the Food Employer's Council, represented the Ruchtis' claim with the Teamster's Union and the Butcher's Union. When asked about the nature of the wage claims, which was the foundation for the defendants conduct vis a vis Ruchti's operation, the Court refused to let counsel inquire into the nature of the dispute (R.T. 1082, 1083, 1084, 1085). On pages 1086 through 1093, counsel explained the purpose for the questions which was simply aimed at showing the fact that

there were wage claims owing in the approximate amount of $30,000, the amount requested by the Teamsters and the Butchers from Ruchti, that a settlement was reached and reneged upon by Ruchti, that the nature of the wage claims were known by the Teamster officials and that Prayzich, the Employer's representative acknowledged that there were approximately $30,000 of legitimate outstanding wage claims against Ruchti Bros. While Prayzich could not testify to the ultimate intent of the Union members who picketed Ruchti's trucks, obviously his views communicated to them from information he placed at their disposal was admissible as a foundation for the formation of their intent. Nevertheless, the Court rejected defense counsel's argument.

The next witness for the defense was a Teamster Attorney and Labor Law expert, George Pappy. Pappy attempted to explain the concept of ambulatory picketing whereby Union members can conduct picketing of moveable vehicles. The prosecution objected without stating any grounds, as usual, and the objections were sustained. (R.T. 1100). Pappy was asked as to whether Mr. Ruchti had ever sought any avenues to prevent the ambulatory picketing and the objection was sustained. (R.T. 1101). Pappy was asked as to whether a Union could picket to collect wages which had been earned and the objection was sustained. (R.T. 1102). The Court snapped at the witness and stated, "Mr. Pappy, you are a lawyer, I think you understood what an objection being sus-

tained means." (R.T. 1102). Pappy was prevented from describing various forms of picketing (R.T. 1103), or explaining whether a Union may picket an organization which has changed it's corporate name although engaged in similar activities. (R.T. 1103). At that point the Judge literally howled at defense counsel, "Mr. McKissack, why don't you let me do my job. I instruct the jury on the law." (R.T. 1103). More and more objections were sustained through-out Mr. Pappy's testimony which are too numerous to catalogue here. Suffice it to say that both he and counsel were subjected to intensive abuse in front of the jury.

During the testimony of William Hughes, President of the King Meat Company of Los Angeles, a very large concern, numerous objections were sustained, questions which were essential to eliciting relevant evidence for the defense. (R.T. 1112-1113). In fact, the government was enjoying such a state of undeserved luxury that at page 1115 co-prosecutor Fareed stated, "I object to any further questions with regard to Pronto Unloading". That seems quite a presumptuous objection since one-half of the lawsuit dealt with the activities of Pronto Unloading Company. On pages 1118 and 1119, the defense was prepared to show that a major prosecution witness, Roberty Dougherty, had falsely testified that Pronto Unloading had made twelve payments on Archie Galea's automobile. But the Judge would not even allow preliminary questions to be answered. On page 1123 the Judge would not even allow William

Hughes, a former Vice-President of King Meat Company, to testify that Eddie Martinez had told him that he and Bob Dougherty along with Fred Shelley were working out a deal where they could take over the whole unloading business in Vernon. On the very next page, the Court instructed defense counsel Nizinski that he could not use Mr. King to impeach his own witness, Mr. Martinez. But, Mr. Martinez was the government's witness, and recalled only momentarily by Mr. Nizinski. When this was pointed out, the Court decided that a Martinez, Dougherty, Shelley trio hoping to use governmental immunity to take over the unloading services in Vernon did not show bias. (R.T. 1124).

Mr. Nizinski recalled Jesus Villamonte Vargas to establish that he was not kept invisible by Pronto Unloading Company and had signed certain documents which were marked "Defendants' F-1 and 2". (Vargas had previously testified to signing no documents and being treated as a non-entity). The Court, in the presence of the jury, referring to the documents, exclaimed, "They have nothing to do with this lawsuit. The objection is sustained." (R.T. 1129). A moment later, when Mr. Nizinski explained the legitimate basis for his question, the Court responded, "This is not the point at all, Mr. Nizinski. That is not the point at all. That is not the point at all." (R.T. 1130). When Mr. McKissack joined Mr. Nizinski's offer of proof, the Court responded, "That has nothing to do with the lawsuit." (R.T. 1130).

On pages 1133 and 1134, the Court displayed another rash of temper at Mr. Nizinski without any basis. On pages 1141 and 1142, defense counsel sought to explore the $1500 loan from Campanale to Martinez. The FBI Agent was asked about whether he had investigated Martinez books for income taxes. (R.T. 1141). The Court sustained an objection and instructed the jury that as a matter of law the FBI had no jurisdiction to investigate for income tax. He further said, "That is the responsibility, by statute, given to the Internal Revenue Service of the Department of the Treasury". (R.T. 1142). Interestingly enough, the FBI was in possession of Donald Matthews' (one of the defendant's) tax returns for a couple of years, and the fact that statutory jurisdiction is invested in the Department of the Treasury, given what we know of Watergate, certainly does not warrant an ineluctable, unchallengeable conclusion that such information is not, in fact, obtained by those not licensed to obtain it.

On page 1198, is an example of some of the over technical chicanery condemned in the Ryan case, supra. Co-defendant David Santana, of the Butcher's Union, who was with Attorney McKissack's clients at the scene of the Ruchti picketing answered questions on direct by Mr. Fishman, his attorney. Subsequently, Mr. Carney, for the government, extensively questioned and cast doubt on the nature of Ruchti's packing, unpacking, transportation, etc., which required clarification on behalf of those members of Local 626 represented by

Attorney McKissack. It is to be remembered that this was the defense' phase of the case. When Attorney McKissack asked to pose some questions arising out of the government's cross-examination, the Court stated, "No, you don't, Counsel. You can only cross-examine. Mr. Fishman can re-direct, and that's it." (R.T. 1198). Fishman asked further questions, and the government again conducted cross-examination. When Attorney McKissack again sought to examine the witness effectively he was told, "You have had your opportunity". (R.T. 1201).

Defendant Archie Galea took the stand, and he was asked about his relationship with Robert Ruchti, II, and whether Robert Ruchti, II, represented that he was handling the grievances for Ruchti Bros. The defense offered the testimony on the state of mind of the defendant, clearly relevant. The Court nevertheless sustained the objection (R.T. 1261); and again on 1262; and again on 1263. At page 1266, Judge Real demonstrated a total unwillingness to afford the defendants their day in Court. Referring to a document of the Labor Commission, Judge Real stated:

> "THE COURT: They have to be aware to this. They are --
>
> MR. McKISSACK: They are not.
>
> THE COURT: Just a moment. They are labor leaders, they have to be aware of this procedure and this problem. They cannot go out on their own and take the law into their own hands. That is part of the problem."

The argument continued ad nauseam. For the hundredth time, the crucial point was overlooked, namely whether the defendants should be convicted, as they ultimately were, under the Hobbs Racketeering Act, carrying a penalty of up to Twenty years in prison on each count, because of labor activity arguably lawful and certainly without any of the defendants having the requisite criminal intent that the statutory scheme contemplates. As Judge Real viewed it, the question was not whether they could be sued in the State or Federal Court, enjoined in a State or Federal Court, taken before the NLRB, asked to arbitrate, Judge Real made it crystal clear to the jury that his view of the law was that they could no longer protest for wage claims, and, therefore, they were guilty of violating the Hobbs Racketeering Act -- and a dangling instruction or two on intent, out of perhaps an hours worth, could not erase the daily commitment to his position which the Judge vocalized. If the Court will examine page 1276, it can understand this counsel's frustration. For once again, the Court concludes that the defendant's intent meant nothing because he was bound by some commissioners proceeding or NLRB proceeding with which he had no familiarity and which wasn't binding anyhow.

After the parties had concluded the questioning of one of the many defendants, Mr. Galea, the Judge took over and intensively interrogated Galea from page 1408 through 1426.

Co-counsel Nizinski called Charles B. Frank of the Frank, Fellows, and Wolfson Meat Company to the stand and again numerous questions relevant to determining whether the Union and Pronto Unloading Service put pressure on the packers were asked, objected to, and sustained. (R.T. 1443, and 1444). Finally, the Court simply intimidated Mr. Nizinski with the threat, "Please don't do that to me". Mr. Nizinski then desisted from asking any further questions and so did everyone else. (R.T. 1444). Similar instances are repeated (R.T. 1446).

The Court, through it's own questioning, sought to establish that it was a suspicious occurrence for business agents to be on a picket line (R.T. 1478-79). In this instance, the Court did not succeed. The Court prevented Mr. Petas from verifying that Mr. Dougherty, one of the prosecution's chief witnesses, offered a bribe to a former Teamster official to allow him to exercise a greater amount of control in Vernon. (R.T. 1496).

On page 1606, co-counsel Nizinski asked a simple question of a witness, "Are you acquainted with a Mr. Don Matthews?" The government objected as to any further questions concerning the Hoffman Meat Company, and the Court sustained the objection. The defense recalled to the stand Mr. Donald Prayzich. The Court interrogated Mr. Prayzich extensively to emphasize his theory that Robert Ruchti was not involved in any wage dispute with Teamster members, but Ruchti Bros. was. (R.T. 1620-1621).

The next witness Andrea Brannon, received similar treatment by the Court. (R.T. 1626-1631). The Court again disallowed defense witnesses to testify to the lack of pressure to use the services of Pronto Loading and Unloading Company (R.T. 1633, 1639, 1640). And again, on page 1643, the Court states, "It has no relevancy to this lawsuit. Why don't you get into this lawsuit?"

An extensive conversation occurred between the bench and counsel (R.T. 1645-1650) -- that conversation culminated with the following result:

> "THE COURT: Why don't you gentlemen get into this lawsuit?
>
> MR. NIZINSKI: We are, your Honor.
>
> THE COURT: You are not. You haven't been here for three days."

On other occasions, the Court prevented witnesses from discussing the lack of pressure put upon them to use Pronto Unloading Service (R.T. 1652, 1653, 1655).

The defense called John J. Griffin, Commissioner for the Federal Mediation Service to testify. (R.T. 1657). He formerly negotiated for Food Employer's Council. The Court again stressed that he represented the company and not individuals. (R.T. 1664, 1666). Robert Cien Ferani was called by the defense to testify that nearly $1100 back wages was still owed to him by Robert Ruchti or Ruchti Brothers. The Court immediately announced that he was foreclosed by law from seeking that recovery, and again the

Court treated counsel abusively in front of the jury. (R.T. 1667-1668). On pages 1718 and 1719, defense attorney McKissack started to pose a question for witness. The United States Attorney objected and the Court sustained the objection. McKissack pointed out that he had not even finished asking his question, and the court pointed out in the presence of the jury, "You don't have to finish it". (R.T. 1719).

On pages 1736 and 1737, Defense Attorney McKissack sought to introduce the contract between Local 626 and Ruchti Brothers. An objection was sustained. (R.T. 1737).

Teamster Attorney George Pappy returned to the stand for further examination. (R.T. 1839). During the time he was on the stand, all kinds of relevant information was excluded by the trial judge and the trial judge engaged in the deliberate attempt to badger and embarrass the witness by misquoting his testimony and attempting to make meaningless a long-time distinction between matters over which the NLRB had jurisdiction and matters which they do not. (See: R.T. 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1857, 1862, 1867, 1872, 1973, 1874, 1875, 1877, 1878, 1879, 1880, 1881, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926).

In rebuttal,the government called Douglas P. Olins,

Attorney for the National Labor Relations Board (R.T. 1952). He explained that the charges filed by the Union against Ruchti Bros. included a refusal to bargain, and involved an arbitration by the Food Employer's Council, whereby Mr. Ruchti was found to be in violation of the contract. (R.T. 1954). Olins testified further that the NLRB had jurisdiction only over unfair labor practices as opposed to violations (R.T. 1957). The Court relentlessly and ruthlessly sought to make Mr. Olins, the Prosecution's witness, alter his position from stating that the NLRB may assess a monetary award for an unfair labor practice to one of claiming that the NLRB has jurisdiction and exercises it to force the collection of back wages due and payable under a contract. (R.T. 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975).

Roberty Dougherty was again called to testify. In the cross-examination commencing on page 1983, the Court repeatedly intervened to prevent the defense from executing indisputable impeachment going to certain jugular concerns (See for example: 1985, 1987, 1988, 1992, 1994).

Fred Shelley was again called to the stand. Again co-counsel Nizinski was besieged by the Trial Court. (R.T. 2001, 2003, 2004).

The above presentation does not purport to be exhaustive and if space permitted - and it would take from 500-600

pages - the whole text could be laid out for the Court's examination. As it is, approximately 70% of the Court's abusive conduct has at least been alluded to and usually page references have been given. Counsel is certain that after reviewing the entire transcript, that it is quite easy to see why the jury would convict in the fashion in which they did. Counsel earnestly urges that this Court keep in mind United States v. Ryan, supra, and not only reverse this case, but do it's utmost to insure that similar mockeries of justice do not take place in a Court and cause all semblance of justice to disappear.

APPENDIX "B"

Petitioners in Argument II, supra, presented the law pertaining to prosecutorial misconduct geared to and resulting in the deprivation of their right to a fair trial. Unlike Appendix "A" to Argument I,this one will be brief. It will be brief because to elaborate at length upon the Government's synchronized collusion with the trial court to present whimsical objections to valid and badly needed testimony by the defense, to itemize the efforts made by the prosecution to mislead the court or join it in attempting to rule inadmissible and keep from the jury the vitals of the defense case, and the unequaled effort by the government to represent that it was still presenting it's case and upon entry into the courtroom smugly rest with a cheshire grin, would require the writing of a textbook. Therefore, first and foremost, Petitioners direct the Court's attention to the trial record and the numerous uses of the above-mentioned tactics set out and largely duplicated in Appendix "A" to Argument I.

We are convinced that a thorough scrutiny of the record will lead to but one conclusion: that there was a total disregard by the government for the rules of fair play and the basic notions of either actual or ostensible justice.